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978-1-107-00154-1 - Consuls and Res Publica: Holding High Office in the Roman Republic

Edited by Hans Beck, Antonio Duplá, Martin Jehne and Francisco Pina Polo

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*The republic and its highest office:
some introductory remarks on
the Roman consulate*

*Hans Beck, Antonio Duplá, Martin Jehne
and Francisco Pina Polo*

The consulship of the Roman republic is notoriously under-researched. To be sure, the republican “constitution,” and with it the consulate, have been addressed to a certain extent. Examples in English include Andrew Lintott’s *The Constitution of the Roman Republic* and T. Corey Brennan’s and John North’s more recent syntheses.¹ In some sense, these studies provide a comprehensive summary of a long series of scholarly contributions on the republic’s institutional apparatus, starting with Theodor Mommsen’s contribution and explored further in the works of Ettore de Ruggiero, Francesco de Martino, Jochen Bleicken, Wolfgang Kunkel and Roland Wittmann.² This scholarship deals with the Roman “constitution” in general terms, and all of these essays focus, more or less, on the supreme magistracy in the republic. Furthermore, the consulship has been studied in research on Roman chronology and on the Roman nobility.³ Republican prosopography is roughly based on the *Fasti Consulares* as a starting point.⁴ In fact, without Broughton’s monumental work it would be practically impossible to tackle any study on the republican period.⁵ And, of course, the groundbreaking work of Adalberto Giovannini must be mentioned. Giovannini succeeded in proving the non-existence of the assumed *lex Cornelia de provinciis ordinandis*, prompted by Mommsen, and

¹ Lintott 1999b; Brennan 2004; North 2006.

² Mommsen 1887–8; de Ruggiero 1892, 679–862; de Martino 1972–5; Bleicken 1995; Kunkel & Wittmann 1995.

³ Cf. for instance Hölkeskamp 1987; Feig Vishnia 1996; Beck 2005.

⁴ Drummond 1974; Pinsent 1975; Mora 1999.

⁵ Broughton 1951–86. The work of Lippold 1963 has a more limited purpose, since he analyzes the political role of the consuls in the period between the years 264 and 201, as does the work of Badian 1990b. Badian studies the prosopography of the consuls between the passing of the *lex Villia* and the beginning of the civil war, focusing on descent to analyze the importance of noble status for the recruitment of consuls.

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specified the characteristics of the consular *imperium*.⁶ However, there is no book-length treatment of the office and its competences, or of the tasks performed by the consuls and their role in the government of Rome during the republic. The situation is somewhat different in other areas of constitutional research. The senate,⁷ the popular assemblies,⁸ the aedileship,⁹ the tribunate of the plebs,¹⁰ the censorship,¹¹ the dictatorship¹² and most recently the praetorship¹³ have all received in-depth treatment and works of analysis that were at times truly magisterial. In other words, virtually all republican institutions have, at some point, been the subject of extensive, although not completely updated, research. To date, the consulship is the only institution that has not received this attention.

This is astonishing, at best. The situation cannot be explained by the hazards of scholarship alone. Rather, the consulship is a nebulous office, which makes it an elusive subject of research from a constitutional point of view. While the tribunate of the plebs and the praetorship have fairly clear-cut responsibilities and spheres of authority, the consulship has only an aura of general leadership with rather blurred limits of competence. Consuls are allowed to take care of nearly everything in the administration of the *res publica*, but often their surveillance remains more or less an abstraction without much significance in everyday business. To understand Roman consuls better it is therefore necessary to determine not so much what they were allowed to do according to constitutional theory, but what they did in political practice. Or to rephrase it in a more programmatic way: the analysis of the consulship is better suited to cultural history and historical anthropology than the classical “Staatsrecht.” And there is much to do in this approach.

It is precisely the study of the consulship that is the main objective of the research team formed a few years ago by the authors of this introduction. The research work has been carried out under the sponsorship of the Ministerio de Ciencia y Educación of Spain, which funded a project entitled “Consuls, Consulars and the Government of the Roman

⁶ Giovannini 1983. The maintenance of the *imperium militiae* by the consuls during their consular year after Sulla had already been pointed out by Balsdon 1939 and by Valgiglio 1957, esp.132–40. Girardet 2001, esp.155–61 = Girardet 2007.

⁷ Bonnefond-Coudry 1989; Ryan 1998.

⁸ Botsford 1909; Taylor 1966; Develin 1975b; Farrell 1986; Yakobson 1999; Pina Polo 1989, 1996; Laser 1997; Millar 1998; Sandberg 2001; Morstein-Marx 2004.

⁹ Sabbatucci 1954. ¹⁰ Bleicken 1955; Lobrano 1982; Sancho 1984; Thommen 1989.

¹¹ Suolahti 1963; Pieri 1968. Cf. also the papers of Astin 1982; Astin 1985.

¹² Bandel 1910; Hartfield 1982; Hurlet 1993. ¹³ Brennan 2000.

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Republic” (HUM2004–02449 and HUM2007–60776/HIST).¹⁴ In this context, an international conference was held at the University of Zaragoza in September 2007 where most of the papers that make up this volume were presented.

In the traditional account, the consuls are the regular supreme magistrates of the Roman “constitution” and their image is linked to the political-military management of the state from the very beginning. During the conquest of Italy and, later on, the Mediterranean, their military dimension as commanders of the army became particularly relevant. Finally, during the late republic, their political dimension is highlighted once again in the persistence of their office in the troubled times of the last century of the republic. But the republic’s highest office, like the Roman “constitution” itself, should be regarded as a “work in progress,” and it cannot be analyzed without taking into account the changing historical circumstances of the five centuries of republican history. Roman tradition itself, as opposed to other historical sources, highlighted the fact that the system developed with the contributions of many generations, and not as a result of the work of one particular legislator at a given time. The consulship is, in that sense, a splendid example of the elements of continuity and change that co-exist in the “constitution” of the Roman republic.

On the one hand, the picture, firmly anchored in Roman imagery, of the consuls as the immediate substitutes for the king in the change from monarchy into republic is a reflection of that continuity. The so-called *lex curiata de imperio* may well be another example of this, if the provision indeed was a genuine archaic relic that became, and continued to be, an imperative for superior magistrates, although it was reduced to a ritual formality later on. On the other hand, the various changes that affect the powers of the consuls with regards to newly created magistracies, or questions such as the date they took office or, something more essential, the transformations of the *imperium*, indicate a dramatic development and adaptation to the changing needs of each particular time. Consequently, the development of the consulship is an indication of the flexibility and creativity of Rome’s ruling class in the republican period.

According to Roman traditions, Livy’s narrative and his predecessors in particular, two consuls, acting as equal partners in power, replaced the

¹⁴ As the main result of the research project, the coordinator of the team, Francisco Pina Polo, has published a monograph entitled *The Consul at Rome: The Civil Functions of the Consuls in the Roman Republic* (Cambridge, 2011).

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king as superior magistrates in 509 BC. However, Livy himself and later authors, such as Festus, also refer to a *praetor maximus*, which has led some to think of a principal magistrate at the head of the newly born republic. Reports regarding the *praetor maximus* and the annual fixing of the nail on the Capitoline temple would support that interpretation.¹⁵ Moreover, the traditional account of the establishment of a new regime is embellished with a series of historical-literary items that render it highly implausible. The stories of Lucretia, the first consuls Brutus and Tarquinius Collatinus, the Etruscan King Porsenna, the expulsion of the relatives of the *gens* of the king, including Collatinus, the conspiracy of Brutus' sons in favor of the restoration of the monarchy and their subsequent execution, as well as other similar events, all suggest tenuous historicity.

The complexity of the many problems deriving from the reconstruction of the beginnings and of the first century and a half of the republic is enormous. There are debates over the names of the first magistrates, whether or not they had dual character, why *tribuni militum consulare potestate* existed, and whether the *Fasti* are relatively historical or totally false. The possibility of a historical reconstruction of that period is discussed, considered in the sources by both believers and non-believers. Without getting bogged down by specific problems, which are out of place in this short description of the history of the consulship, we can establish certain starting points.

After the rejection of the monarchy-tyranny, it is logical to suppose that an absolute ruler was replaced by a series of magistrates, of variable number, to ensure a better distribution of power. In an open city-state, like Rome by the end of the sixth century BC, after an oligarchic coup d'état against a monarch-tyrant, it is reasonable to argue for a joint and temporary exercise of power by the leaders of the most important clans, who were endorsed by their election-ratification at the assemblies. These superior magistrates could be elected by the *comitia centuriata*, originally the people in arms, to hold the office for a limited period of time: one year. The joint and temporary nature of the post seems to be the coherent result of a new distribution of power among aristocratic families. In fact, joint magistracies, in variable number and with limited duration of office, are recurrent in the tradition of the fifth century BC (*decemviri*, *tribuni plebis*, *tribuni militum consulare potestate*).

The essential element of superior magistrates is the *imperium*, a civil and military authority, of sacred nature, exercised *domi* and *militiae*. This *imperium* is complemented by a series of external signs of power: twelve lictors with *fasces* and *securae*, *sella curulis*, *toga praetexta*. They take turns

¹⁵ Livy 7.3.5.

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carrying the *fusces* to emphasize the joint nature of their power. Regardless of the debated historicity of the first *leges Valeriae de provocatione*, it is probable that there was, from a very early stage, some sort of right of appeal of the people against the possible arbitrariness of superior magistrates; thus the balance between *imperium* and *provocatio* is one of the defining characteristics of Rome's political system. The *intercessio* from a colleague or a tribune of the plebs was another mechanism to assure some balance of power, aimed at preventing abuses and favoring reaching consensus.

Rome's constitutional structure, certainly quite peculiar, is also well defined from the beginning in the account that sources give of the origin of the republic. A rigorous analysis of the information provided by historians and antiquarians raises many questions that cannot be answered clearly. Nonetheless, without denying those difficulties, we can outline a historical reconstruction from the retrievable elements in those sources. For example, even if we accept the possible existence of eponymous magistrates from the start, it implies the existence of lists of magistrates from a very early stage, which in turn supports the plausibility of the *Fasti*.

Indeed, it is undeniable that only after the enactment of the Licinian-Sextian laws (367/6 BC) do we have more detailed and reliable information about the consulship. The various theories about consuls or *praetor maximus* and other *praetores*, or *magister populi*–*magister equitum*, about the *tribuni militum consulare potestate*, give way to greater certainties. From that moment on, we have definite knowledge of a double magistracy, linked to the patrician–plebeian conflict and the plebeian demand for political parity. Fabius Pictor already pointed out the importance of this milestone in the history of the Roman constitution. After 367/6, and for over a century, there were to be three superior magistrates *cum imperio*, with closely linked powers. It is possible that the so-called *lex Licinia Sextia de consule plebeio* enabled the election of a plebeian consul and that later on (*lex Genucia*, in 342 BC), this election was made compulsory. The formation of a new patrician–plebeian ruling class, the *nobilitas*, was to be, from then on, closely linked to the exercise of the consulship, *maximus honos*, as the clearest expression of their prominence and control over the political system.

From the second half of the fourth century BC, once the direct patrician–plebeian confrontation was over and as the integration of the plebeian elite within the new Roman aristocracy was in progress, the central feature of the history of Rome is external expansion. The conquest of Italy first and later on of the Mediterranean is characteristic of this middle period of the republic, from the final few decades of the fourth century to the final decades of the second century BC. This almost uninterrupted series of military campaigns, increasingly more distant and longer-lasting, was to

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be the background for the leading role of consuls as generals of the Roman legions.

Military needs and the growing complexity of the Roman state brought about a series of important changes in the Roman “constitution” that affected the consulship. Its status as a supreme regular magistracy never wavered but some aspects, in particular regarding the *imperium*, did undergo some changes. In this period, almost all the consuls went to the provinces that had been allotted to them, either in Italy or beyond, after remaining in Rome just a few weeks, or at most, two or three months at the beginning of the consular year. As opposed to the more common practice in the late republic, very few remained in Rome year-round. These *consules-imperatores* were famous for their military deeds and became the essential core of the *res gestae* of the *nobilitas*, the backbone of Rome’s historical narrative.

As previously mentioned, the new military demands resulted in a series of innovations in the exercise of the magistracy of the consulship. Probably the most remarkable instance was the *prorogatio imperii*, which entitled an ex-magistrate to hold *imperium* and, consequently, to continue in command of the army beyond the annual term of his office. The first instance is attributed to Q. Publilius Philo, *cos.* 327 and promagistrate *pro consule* the following year, within the context of the Samnite Wars. From the second half of the third century BC onwards, that *prorogatio* is increasingly more frequent. As indicated in this volume, during the Hannibalic War we know of about eight extensions of the *imperium* each year, simply by means of a decree of the senate.

The dates of the elections and of the assumption of office are also modified. In the more ancient period, the election was held upon the consuls’ return from military campaigns or before their term of office expired; with Sulla, the elections were called in the summer. The date the consuls took office was March 15 between the years 217 and 154 BC. From the year 153 onwards, the appointed date was January 1, thus allowing a longer period to deal with political duties in Rome and with military reparations and requirements outside Rome.

The gradual creation of new magistracies also had an historical effect on the powers of the consulship. The censorship was created in the fifth century BC, by means of the Licinian-Sextian laws, the praetorship in the fourth century BC, and the second praetorship in the middle of the third century BC. It was probably at this point that the *cursus honorum* was established as a more or less strict sequence in the exercise of the various magistracies. The *cursus* became definitively established with the *lex Villia annalis* of 180 BC. The consulship was the highest executive rank, the supreme military

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command and therefore the major source of prestige. The increase in the number of praetors did nothing but reinforce the prominent status of the consulship. This pre-eminence is evident in the *res publica* through their leading role in politics and in diplomatic, military and religious matters.

Polybius, in his reconstruction of the Roman “constitution,” says that the consuls, in their powers and leading roles, are similar to kings. However, Polybius himself at the same time acknowledges the absolutely central role of the senate; the balance of power between magistrates, in particular the consuls and the senate, is the key element in the stability and achievements of the Roman system in the third and second centuries BC. The break of that cohesion was a key factor in the unleashing and development of the late-republican crisis.

In the late republic, there were again changes in the sphere of power of the consuls and in their political role. We must look at, on the one hand, the appearance of the so-called extraordinary commands, and on the other hand, what Millar described as the “politicization” of the consulship.

Through the commands of proconsuls and propraetors, the *imperium* had become fragmented and separated from the exercise of the annual magistracies. At this moment, with the *imperium maius* granted to Pompey in the years 67 and 66, a new modification was introduced and along with it a precedent of immeasurable consequence was set. Socio-political and military-specific needs caused the introduction of constitutional innovations that affected the traditional hierarchy and distribution of power. A potential source of conflict between the various holders of *imperium* emerged, which contributed to the destabilization of the traditional Roman “constitution.” The leading role of the popular assemblies in the granting of these extraordinary commands did nothing but exacerbate the problem.

In an increasingly conflict-ridden context from the last third of the second century onwards, another change took place regarding the direct political leadership of the consuls in the *Urbs*. Whereas in the second century the *consulares* had been particularly active in Rome’s regular political life, in the first century the consuls themselves took on a central political role.

After Sulla, the consuls gradually left the city more frequently at the end of the year, after remaining in Rome for about ten months, or even remained in the *Urbs* their whole year of office. This practice was attributed by modern historiography, endorsed by the authority of Mommsen’s interpretation, to a supposed *lex Cornelia de provinciis ordinandis*. A series of scholars, in particular Giovannini, have demonstrated the non-existence of that law. Once we accept the absence of any laws in this regard, we must,

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however, question what the reason was for this change in the patterns of behavior of the consuls. The consuls' growing participation in the politics of Rome can be observed in the *contiones*, and in the presentation of *rogationes*, in the debates of the senate. It could be asserted that this new and active leading role brought them closer to the tribunes of the plebs in their political leadership in the city. This change fits well within the overall contents of the Sullan reform, in that it limited the leadership of tribunes in the political arena. Nevertheless, whatever the cause, this was another substantial change in the traditional distribution of political roles in the "constitution" of the Roman republic.

Apart from the two main events mentioned above, that is, the extraordinary commands and the politicization, the particularly troubled circumstances of the last republican century also affected the exercise of the consulship at different stages. For example, despite the prohibition of iteration, probably set forth in the second century, we find the successive consulships of Marius, Cinna or Carbo, although all of them were certainly exceptional cases. Besides this, different measures were proposed for a better regulation of the exercise of the higher magistracies, such as a possible Sullan law on the minimum age for the magistracies. The management of the empire became one of Rome's main problems and we know of several laws regarding the government of the provinces that directly affected consuls and consulars; for instance, the Gracchan law on the allocation of provinces before the consuls take office, the *lex Iulia repetundarum* of 59 or the *lex Pompeia de provinciis* of 52, which set forth a lapse of five years between the magistracies and the government of a province.

Leaving aside all the changes, modifications or new regulations of their spheres of control and competences, the consulship always remained the ultimate ambition for any *nobilis*. Becoming a consul determined one's place in the hierarchy of the ruling class. Its joint nature was the permanent expression of the aristocratic concern to prevent an individual from amassing excessive power through higher magistracies. Pompey's consulship *sine collega* in 52, for a short period of time, is an extraordinary occurrence and the fact that it was an exception, and not a regular practice, confirms a soundly established rule.

The relevance of the consulship, from the point of view of the senatorial aristocracy, was also confirmed at various critical instances that reoccur in the last century of the republic. In those circumstances, when the senate resorts to the so-called *senatus consultum ultimum*, the consuls are mentioned in the first place in this senatorial appeal, to stress their prominence and responsibility in the restoration of order and normality in the *res publica*.

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With the advent of the principate a profound change in the nature of the consular *imperium* took place. The magistracy remained as the culmination of the *cursus* but there was a substantial alteration in its nature, parallel to the gradual concentration of actual power in the hands of Octavian-Augustus. Then the “demilitarization of the consulship” occurred. However, the political system was then different from the republic, and the *res publica* was shadowed by the *princeps*.

Up until that moment and throughout five centuries, at least as it is recorded by the Roman sources, the consuls had been not only the supreme magistrates but the very personification of the republic itself.

The main purpose of this book is to begin to fill the gap in scholarship on the consulship by studying the Roman republic. The approach is by no means limited to “constitutional” questions. Instead, the predominant role of the consulship in, as well as its impact on, the political culture of the republic is investigated. As the highest magistracy of the *res publica*, the consulate was the focal point of Roman political life. Both the ruling class and the citizens of the lower social stratum fixed their gazes on the *maximus honos* – to be sure, from different perspectives and with differing expectations. While the former aspired to the consulate as the defining office of their social rank, the latter perceived it as the embodiment of the Roman state. Thus the consulship was not merely a political office, but rather prefigured all aspects of public life. The multifaceted character of the consulate invites a full-fledged investigation, and the book explores these various facets with contributions touching on the political, social, cultural, religious and also economic implications of holding the highest office. It covers the entire period of the Roman republic, from its beginnings in the fifth century until the reign of Augustus.

The fifteen chapters are arranged both in a diachronic order and clustered around broader themes. The first section deals with the much-debated question of the origin of consulship as the supreme magistracy in the Roman republic. The problem, as is well known, rests on chronologically establishing the beginning of consulship, whether it existed since the end of the monarchy or was the result of a process in which other magistracies in charge of the *civitas* could have existed previously. Ultimately, the main difficulty lies in whether or not to accept the ancient sources, which unanimously refer to the existence of the consulship from the year 509, and in particular the reliability of the list of consuls known through the *Fasti Capitolini*.

Three chapters refer to these problems and make up the first part of the book. Christopher Smith (“The magistrates of the early Roman republic”)

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leans toward granting credibility to the list of ancient magistrates. While he is skeptical about the fact that some ancient historians may have simply invented magistrates for the initial part of the republic, in his opinion, historians and antiquarians worked simultaneously using the same lists of magistrates and the same evidence, trying to produce a coherent discourse regarding a process of creation of the republican institutions that Romans knew were the result of the work of various generations and not of one single legislator. Gianpaolo Urso (“The origin of the consulship in Cassius Dio’s *Roman History*”) defends the credibility of Cassius Dio as a source for the early republic. The Greek author was following a source that acknowledges an original unequal collegiality among the chief Roman magistrates. His account indicates that the consulship resulted from an evolutionary process in the first half of the fifth century, as multiple praetors possessing unequal power were finally replaced by two consuls enjoying equal power during the decemvirate of 451–450. Finally, Alexander Bergk (“The development of the praetorship in the third century BC”) rejects the idea that the praetor had a minor position in relation to the consuls in the fourth and earlier third century BC. On the contrary, the three chief magistracies created in the year 367, two consuls and one praetor, were colleagues. When wars took place increasingly far away from Rome, the permanent presence of at least one magistrate with *imperium* in Rome was required. The praetor then lost his military function and the city of Rome was his usual field of action. Only then did the hierarchy of consuls and praetors emerge, and the *cursus honorum* was born.

From the time of their creation, the consuls were the chief magistrates of the Roman state and always acted in close collaboration with the senate. The consulship’s *imperium* determined the consuls’ powers and gave the office numerous functions, in both the military and the civil domains. In his analysis of the Roman republican institutions, Polybius describes consuls, above all, as the supreme commanders of the Roman army, and as such he claims they had absolute power on the battlefield.¹⁶ Between the fourth and second centuries, the consuls were indeed mainly *imperatores*, and as such they left Rome year after year to go to their *provinciae*, where they commanded the legions they had previously recruited. In that period the consuls were the main persons in charge of Roman expansion, first in Italy, and later throughout the Mediterranean. Yet, as Polybius also says, the consuls carried out a great number of civil tasks, mainly, but not only, during their stay in Rome at the beginning of the consular year after taking

¹⁶ Polyb. 6.12.